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## NEW DRAFT LAW ON WASTE AND CONTAMINATED LAND

At this point in the 21st century it is already obvious that Spain has a problem with waste management. Already last year, 50% of urban waste should have been managed in a way that allowed its reuse, but already in 2019 it was obvious that this goal was not going to be met, since in that year not even 35% of the target was reached and the Government now assumes that the target set by Europe for 2020 was impossible to meet. This has led to a complaint to the European Commission, which was considering the possibility of opening a sanctioning file against the country.

The Draft Law on Waste and Contaminated Land recently approved by the Government aims at ensuring that by 2030 Spain will have reduced waste generation by 15% compared to the 2010 levels. Therefore, by the time the new draft law is finally approved and comes into force:

1. The sale of single-use plastic objects such as cutlery and straws will be prohibited.
2. The incorporation of microplastics in cosmetic products and detergents will be prohibited, and customers of restaurants, bars and other food establishments will have to be provided with tap water free of charge.
3. Two new taxes will be approved. One will tax single-use plastic containers with an amount initially estimated at €0.45 per kilo; and another will tax the deposit of waste in landfills and incineration facilities.

These new taxes are a direct consequence of European Union requirements. Their purpose is to encourage recycling activities and reduce the presence of plastic waste in the natural environment.

The first official estimates suggest that the new taxes will make it possible to obtain an annual revenue of around 1,400 million Euros, which will be used to achieve the above-mentioned objectives.

4. The fight against asbestos will be intensified. The approved project includes - as a supposed novelty - an additional provision setting forth that *"before January 1, 2023, the city councils will elaborate a census of asbestos containing facilities and sites, including a calendar*



*for their removal".*

This public census, will be in addition to the current sectorial and municipal efforts st in this area and will be sent to the competent health and environmental authorities of the different Autonomous Communities, which will be bound to implement inspection procedures to confirm compliance with the obligations to remove and deliver asbestos to authorized Handling Agents (Gestores) for disposal within the deadlines of the calendar to be established to these effects.

The burden of these obligations will foreseeably fall (as is partially the case at present) on the municipal entities.

The Draft Bill, which will eventually replace the current Law 22/2011, of July 28, on Waste and Contaminated Soils, reproduces the chapters in the current legislation dealing with obligations, guarantees of compliance, liability of waste producers and other aspects of environmental liability at the national level.

The Dreft also includes - in its Title VIII - a series of articles dealing with various aspects of interest in relation to contaminated land, such as

- (i) The Catalog of Potentially Polluting Activities;
- (ii) The procedures for the Declaration of Contaminated Soil;
- (iii) The identification of the parties responsible for the decontamination and remediation of contaminated soils; and
- (iv) An Inventory of Contaminated Land Declarations and Decontaminations.

It should also be noted that the new draft law contains a large number of provisions whose entry into force will be subject to subsequent implementation by the Executive Branch. Among other aspects of interest, the following will be subject to the enactment of future implementing regulations:

- a) Regulatory development of the financial guarantees provided for in the Law.
- b) To establish standards for the different types of products in relation to the waste they generate.
- c) To develop the regime on the extended responsibility of the producer.
- d) To establish rules for the generation and management of waste, as well as the different waste treatments and the identification of the different kinds of waste foreseen in draft article 6.1.
- e) To determine the procedure whereby substances or objects will qualify as by-products in accordance with draft Article 4.2.
- f) To regulate the shipment of waste provided for in draft Article 31.1.
- g) To establish the list of potentially contaminating activities and the criteria and standards to be applied for the declaration of contaminated land pursuant to draft articles 98.1 and 99.1, as well as the procedure to implement the marginal notes to the Land Register sheets of soils declared contaminated, in accordance with said draft article 99.

- h) To regulate and apply the taxes provided for in Title VII.
- i) To update the amount of the fines established in draft article 109 of the Draft Law.

Some of these regulations currently exist within the framework of the current Waste Law, but we consider that they should be updated according to the parameters and compliance obligations provided for in this new Bill.

Madrid, December 27, 2021

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